# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

### WHAT LITTLE I KNOW

Not long ago, I heard a man of my generation reminisce about his high-school days. He mentioned with particular fondness the shotguns racked across the rear windows of the pickups parked in the student lot. Someone else mentioned the shotgun that went with him to college in case a classmate invited him home for a hunt. "Probably get me kicked out today," he laughed, shaking his head. People nodded. A wife murmured something about no gun violence in the old days, how life was better then, and safer.

I remember those days. I remember the schoolmate who took a shotgun upstairs and killed herself after her boyfriend died in a car crash. And the guy I knew at college who shot himself to death during a semester break. *Better?* I wondered, sitting at that cheerful cocktail party. *Safer?*

My mother used to go trapshooting with one of her teenage beaux. My father was a veteran and also—briefly—a constable in our small town, a position that sometimes required him to carry a gun. They sent me to a summer camp that offered target shooting right alongside swimming, archery, field games, campcraft, and art. My father-in-law hunted with bird dogs. My husband grew up shooting quail. And so I brought all of that background to *District of Columbia v. Heller*,[1] which recent events prompted me to revisit this spring.

I still line up behind *Heller*'s dissenters. But of course I can see that the Second Amendment raises questions that cannot be answered merely by asserting that we know what the men who approved it had in mind. I know too that my answers might be

1. 554 U.S. 570 (2008).

wrong.[2] Yet I recall that among the Founders was one, himself no "advocate for frequent . . . changes in laws and constitutions,"[3] who encouraged his successors to trim the Constitution as they might trim a sail—not to drop canvas, but to work out how it might best be adjusted to account for prevailing conditions. "[L]aws and institutions," he believed, "must go hand in hand with the progress of the human mind."[4] And "as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times," for as he pointed out, we ought not to expect a "civilized society to remain ever under the regimen of their barbarous ancestors."[5]

## THE ISSUE

We have in this issue the typical mix of appellate topics, each a matter of current interest. Mr. Gosney addresses the assessment of the criminal defendant's chances on appeal and Mr. Metzler the challenge of the nested quotation in the appellate brief and the appellate opinion. Professors Dow and Newberry outline the decades-long course of an appeal gone badly awry, Professor Entrikin casts a cold eye on intemperate language in dissenting opinions, and Ms. McGaughey explains the role of the United States Attorney's office in the government appeal. Each is an important contribution to the continuing "dialogue about the operation of appellate courts and their influence on the development of the law"[6] that we have hosted from the start.

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2. *Cf.* GERALD GUNTHER, LEARNED HAND: THE MAN AND THE JUDGE 549 (1994) (reporting Judge Hand's famous acknowledgement that "[t]he spirit of liberty is the spirit which is not too sure that it is right," and so "seeks to understand the minds of other men and women").

3. Letter from Thomas Jefferson, Pres. of the U.S. (ret.), to Samuel Kercheval (July 12, 1816), *available at* https://www.loc.gov/resource/mtj1.049_0255_0262/ (reproducing handwritten original).

4. *Id.*

5. *Id.*

6. *See, e.g.*, University of Arkansas at Little Rock William H. Bowen School of Law, *The Journal of Appellate Practice and Process*, http://ualr.edu/law/publications/the-journal-of-appellate-practice-and-process/.